

LABOUR DEPARTMENT

The 16th November, 1981

No. 9(1)81-6Lab/12562.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s Executive Engineer, Sub-Urban Division Haryana State Electricity Board, Rohtak.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 151 of 1977
between

SHRI MANGE RAM, WORKMAN AND THE MANAGEMENT OF M/S EXECUTIVE ENGINEER,
SUB-URBAN DIVISION, HARYANA STATE ELECTRICITY BOARD, ROHTAK

Present—

Shri S. N. Vats, for the workman.
Shri N. P. Singh, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/RK/273-77/50133, dated 6th December, 1977, under section 10(i)(c) of the Industrial Disputes Act for adjudication of the dispute existing between Shri Mange Ram, workman and the management of M/s Executive Engineer, Sub-Urban Division, Haryana State Electricity Board, Rohtak. The term of the reference was—

Whether the termination of services of Shri Mange Ram was justified and in order ? If not, to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared on 3rd January, 1978, filed their respective pleadings, issues as under were framed on the basis of their pleadings :—

- (1) Whether the reference is bad for misdescription of the management ?
- (2) Whether the workman is still working as A.L.M. on *ad hoc* basis ? If so, what effect ?
- (3) Whether the workman remained absent from 19th April, 1977 to 6th November, 1977 ? If so, to what effect ?
- (4) Whether the termination of services of the workman was justified and in order ?
- (5) If not, what relief is he entitled ?

The management examined Shri J. C. Grover as their sole witness and the case of the management was closed. The management representative tendered a letter written by the workman in reply to letter No. 16015, dated 3rd November, 1977, of the management. The workman examined himself and clerk of the office of Labour Officer, Bhiwani, as his witnesses and closed his case. I heard the learned representatives of the parties and after careful perusal of the evidence decide the issues as under :—

Issue No. 1.—This issue was not pressed by the management, is, therefore, decided against the management.

Issue No. 2.—The workman has admitted in his cross-examination that he has joined his duties as A.L.M. with effect from 7th November, 1977. He has also admitted as correct that he was given the offer,—*vide* Exhibit M-11. Exhibit M-11 is with regard to the extension granted to the workman for further two months. It is, therefore, clear that the workman joined as A.L.M. on the previous terms and conditions. Issue No. 2 is, therefore, decided in favour of the management.

Issues No. 3 to 5.—The management witness has stated that the workman was first initially appointed on *ad hoc* basis for six months,—*vide* Exhibit M-1. The workman submitted his joining report on 13th April, 1973. Exhibit M-2 to Exhibit M-9 were the attested copies of the orders granted extension to the workman from time to time. *vide* Exhibit M-8 the workman was granted extension for a period of two months while previously he was being granted extension for a period of six months on each occasion. The management witness further stated that the workman did not join his duties and absented himself from 26th April, 1977

onwards. The management has pleaded in their written statement also that the workman continued absenting himself in protest to the grant of extension for two months instead of six months. Exhibit M-8 further reveals that during the two months period the work and conduct of the official was to be watched and the detailed report in this behalf was to be sent to the XEN office for the further necessary action. From the contents of this letter Exhibit M-8 it is clear that the management intended to find some excuse to dispense with the services of the workman and as such the management had illegal designs for the exit of the workman. But from the letters Exhibit M-11, M-12, M-13 and M-14 the letters which is the reply of the workman with reference to the management letter No. 16015, dated 3rd November, 1977, it is proved that the management had written letters to the workman advising him to resume duties thereby treating the workman as absent. The workman had been in the service of the management for above four years and the management has brought on record any complaint about the work and conduct of the workman and after a length of four years the intention of the management to watch the work and conduct of the workman for taking further action is quite ununderstandable. It is also proved that the workman did not join his duties and he resorted seek his remedy through recourse of law. In my opinion this is a mixed case of forced absence as well as wilful absence and not a case of termination. The management is, therefore, not required to justify as there was no termination as the workman has joined his duties with effect from 7th November, 1977 and is still in the service of the management. As regards the intervening period from 26th April, 1977 to 6th November, 1977, in my opinion, the same may be treated as leave of the kind due. The reference is answered and returned accordingly.

BANWARI LAL DALAL,

Dated the 30th September, 1981

Presiding Officer,
Labour Court, Haryana, Rohtak.

Endst. No. 3521, dated 30th September, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9(1)81-6Lab/12577.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Hindustan Pottery Industries, Bahadurgarh.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 18 of 1977

between

SHRI KISHAN PARSHAD, WORKMAN AND THE MANAGEMENT OF M/S HINDUSTAN POTTERY INDUSTRIES, BAHADURGARH

Present—

No one for the workman.

Shri S. K. Goswami, for the management.

AWARD

This reference has been referred to this court by the Hon'ble President of India, —*vide* Government order No. ID/RK/62-L-77/21880, dated 4th June, 1977, under section 10(i)(c) of the Industrial Disputes Act for adjudication of the dispute existing between Shri Kishan Parshad, workman and the management of M/s Hindustan Pottery Industries, Bahadurgarh. The term of the reference was—

"Whether the termination of services of Shri Kishan Parshad was justified and in order ? If not, to what relief is he entitled ?"

On receipt of the order of reference notices as usual were sent to the parties. The parties appeared in response to the notices, filed their respective pleadings. Issues as under were framed on the basis of their pleadings : -

- (i) Whether Shri Kishan Parshad was an employee of the management concerned as a workman within the definition of a term as given in section 2(S) of the Industrial Disputes Act on 10th December, 1976 ?

(2) If yes, as per reference ?

The case was dismissed in default on 10th January, 1979 when no one appeared on behalf of the workman. The dismissal order was set aside on 17th August, 1979 and the case was restored to file. The evidence of the parties was recorded. The workman again absented on 30th April, 1981. Fresh notice was issued to the workman which was received unanswered with the report of the postman that the workman was not traceable and in whose care of the notices were sent has also refused to give the address of the workman. Then left with no choice I issued order for *ex parte* proceeding against the workman. Arguments were heard and I also perused the evidence on the record and decided issue as under :

Issue No. 1. —The workman has given relevant facts that he worked with the respondent since 1975 upto 16th December, 1976 the date on which the management terminated his services when he presented his demand for payment of his wages for the month of October and November, 1976. In his cross-examination he has given out that his name was entered in duplicate register maintained by the management alongwith three four other workmen but he did not make any complaint in the Act of the management nor he made any complaints about the non-payment of his wages for the months of October and November, 1976. The other witness produced by the workman belonged to his village residing at present in the same house. The workman filed an application for permission to lead additional evidence and wanted to summon the ceiling clerk of the Labour Officer, Sonipat but he did not prosecute this application and absented himself and was proceeded against *ex parte*. The management witness produced attendance and wages register for the period 1975-76, 1976-77. There was no name of the workman in any of those registers and the management established that the workman had never been in their employment. The letter addressed to him was sent by the Labour Officer, Sonipat to Labour Inspector, Bahadurgarh, dated 8th April, 1977 he had never been sent to the management as there was no endorsement on the letter to this effect. The statement of the workman witness being his co-villager and room-mate, the same cannot be treated to be an independent and good piece of evidence and the circumstances under which the workman disappeared from the proceedings after filing application for additional evidence lead me conclude that the workman had never been in the employment of the respondent and the demand raised by him was false and was raised with ulterior motives of grabbing money from the management. This issue is, therefore, decided against the workman.

Issue No. 2. —In view of my findings on Issue No. 1, Issue No. 2 needs no decision. The workman is not entitled to any relief. The reference is answered and returned accordingly.

Dated the 5th October, 1981.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 3697, dated the 12th October, 1981

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9(1)81-6Lab/12578.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s General Manager, Haryana Roadways, Rohtak.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 25 of 1978

between

SHRI SURAJ MAL, WORKMAN AND THE MANAGEMENT OF M/S GENERAL MANAGER,
HARYANA ROADWAYS, ROHTAK

Present :

Shri S. N. Vats for the workman.

Shri N.C. Jain for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. JD/RK/418-77/6911, dated 14th February, 1978 under section 16(1)(c) of the I. D. Act for adjudication of the dispute existing between Shri Suraj Mal, workman and the management of M/s. Haryana Roadways, Rohtak. The term of the reference was :—

“Whether the termination of services of Shri Suraj Mal was justified and in order ? If not, to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. The parties putting their appearance in response to the same of 3rd April, 1978, filed their respective pleadings. The following issues were framed on the basis of the plea of the parties :—

- (1) Whether the domestic enquiry has been held in accordance with principles of natural justice and the findings of the Enquiry Officer is not perverse ?
- (2) Whether the termination of services of the workman was justified and in order ?
- (3) If not, to what relief is he entitled ?

The management examined Shri Kuldip Singh, Traffic Manager, Hisar as MW-1 and Shri Hari Kishan, Clerk, H.R., Rohtak as MW-2 and closed their case. The workman examined himself as his only witness and closed his case. It heard the learned representatives of the parties and decided issuewise as under :

Issue No. 1. MW-1 has deposed that he was appointed Enquiry Officer by the General Manager, Haryana Roadways, Rohtak,—*vide* his order, dated 22nd July, 1974 which is Exhibit M-1. He further stated that he recorded the statements of the witnesses and given opportunity to cross-examine them to the workman. The statements of the witnesses were Exhibit M-2 to M-6. Exhibit M-7 was the enquiry reports submitted by him. In his cross examination he has given out that he issued notices to workman which are Ex. M-8 and Ex. M-9 but he did not appear on the date. The case was adjourned to 30th September, 1974 but no notice was issued to the workman for the same and the workman was asked verbally to participate on 30th September, 1974. The statement of Shri Ram Lal, Head Mechanic was recorded on 30th September, 1974. The workman produced his defence witnesses on 24th December, 1974 and produced another witness Shri Prem Singh on 27th January, 1975 and another witness Shri Jai Parkash on 30th January, 1975 but there was no order in the file adjourning for 27th January, 1975 or 30th January, 1975. Enquiry report Ex. M-7 was dated 4th March, 1975. He has also given out in his cross-examination that no one appeared on behalf of the management in the enquiry proceedings and he only represented the management. He has also admitted that his concession was based on his personal information rather than on the statements of the witnesses. MW-2 has produced in his statement Ex. M-10 which is the copy of complaint and Ex. M-11 copy of the suspension order, Ex. M-12 show cause notice. Ex. M-13 the reply received from the workman. He has also testified that Ex. M-1 was the letter appointing the Enquiry Officer. Ex. M-14 was the final show cause notice. After receipt of Ex. M-7 Enquiry report Ex. M-15 was the reply received from the workman. Ex. M-16 was the order calling the workman for personal hearing, Ex. M-17 was the final order of termination.

The workman has admitted that all the witnesses were examined in his presence during the enquiry proceedings. Enquiry Officer obtained his signatures after he recorded statements of the witnesses. He was not pressurised and the enquiry proceedings were in normal way. I have carefully read the enquiry report and also the statements recorded during the course of enquiry proceedings and have also read the statement of the Enquiry Officer wherein he has stated that he based his findings on his personal information and not on the statements of the witness. This shows that the Enquiry Officer was not impartial and the findings given by him are perverse and not based on the evidence produced by the parties before him. Though the workman has been granted full opportunity of defence and cross-examination, yet the defence version has not been considered by the Enquiry Officer. The issue No. 1 is decided accordingly against the management.

Issue No. 2 & 3.—In view of my findings on issue No. 1 the termination order based on the Enquiry report which has been held to be perverse cannot be upheld. Moreover the charges levelled against the workman were not of such grave and serious nature warranting the extreme punishment amounting to dismissal. The termination is, therefore, neither justified nor in order. The workman has raised the demand for reinstatement,—*vide* his demand notice, dated 1st August, 1977 after two years and three months of his termination. This is a serious lapse on his part. The workman is entitled to reinstatement with continuity of service and back wages from 1st August, 1977 to the date of his reinstatement at 50% as the workman has admitted the fact of his employment gainfully anywhere in his cross-examination. For the period from the date of his termination to the date of his demand notice the workman is not entitled to any wages. The reference is answered and returned accordingly.

Dated the 5th October, 1981.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 3628, dated the 12th October, 1981

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.